

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID W. GUILFOIL,	§	
	§	No. 449, 2010
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0905003395
Appellee.	§	

Submitted: February 7, 2011

Decided: March 28, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 28th day of March 2011, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) On July 8, 2010, the appellant, David W. Guilfoil, went to trial on three charges: Driving Under the Influence of Alcohol or With a Prohibited Alcohol Content ("DUI"), Failure to Report an Accident, and Inattentive Driving. At trial, the Superior Court denied Guilfoil's motion for judgment of acquittal as to the DUI charge but granted the motion as to the charge of Failure to Report an Accident. Thereafter, the jury convicted Guilfoil of DUI and Inattentive Driving. The Superior Court sentenced

Guilfoil to one year at Level V, suspended after six months minimum mandatory for six months at Level III.¹ This is Guilfoil's direct appeal.

(2) Guilfoil's appellate counsel ("Counsel")² has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").³ Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel also reports that Guilfoil did not submit any points for the Court's consideration.⁴ The State has moved to affirm the Superior Court's judgment.

(3) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.⁵ The Court must also conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.⁶

¹ It appears that Guilfoil was also sentenced to one year at Level V suspended for one year at Level III on charges of theft and criminal trespass in Cr. ID No. 0910020421.

² Guilfoil was represented by different counsel at trial.

³ See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

⁴ The record reflects that Counsel provided Guilfoil, as required, with a copy of the motion, the brief and appendix, and a letter explaining that Guilfoil had a right to submit written points for the Court's consideration. *Id.*

⁵ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

⁶ *Id.*

(4) In this case, the Court has reviewed the record carefully and has concluded that Guilfoil's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Guilfoil could not raise a meritorious claim on appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice